IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.486 of 2006
With
Civil Application No. 762 of 2006

Shri Gafur Sheikh Ali Dhamankar — Appellant
Vs.
Shri Gajanan Ramchandra Shet — Respondent

Ms.T.D.Dalvi for appellant.

Ms.Sharvari Shailendra h/f. Mr. P.S. Dani for respondent.

CORAM: B.H.MARLAPALLE,J.

March 26, 2007.

P.C.

. Heard Ms. Dalvi, the learned counsel for the appellant - original defendant and Ms. Sharvari Shailendra appears with Mr.Dani for the respondent - original plaintiff.

. Regular Civil Suit No.96 of 1993 was filed seeking the possession of the suit property and recovery of damages. The suit property is a small plot of land admeasuring 11 ft. x 21 ft. and it was given to the defendant sometimes in the year 1978 without any compensation / rent with a temporary structure standing on that so that the defendant could run his dry fish shop. The suit was allowed by the trial Court and the defendant was ordered to hand

over the possession of the suit property to the plaintiff on or before 30/11/2000. This decree was challenged in Civil Appeal No.176 of 2000. However, the appeal also was dismissed on 21/2/2006 by the learned Additional District Judge at Raigad-Alibaug.

. The plaintiff in support of his case examined himself and four other witnesses whereas the defendant examined himself and two other witnesses. It was the claim of the defendant that the plot of land was given to him by the plaintiff on leave and licence basis and he constructed thereon a pakka structure so as to run a shop. When he had taken such a plea that he had constructed the pakka shop on the suit plot, the onus of proving the same squarely rested on him. DW 3 was his carpenter and DW 2 was the Gram Sevak of the concerned village panchayat. His carpenter stated that he was engaged to put up the plinth but did not state the date when he was engaged nor did he mention the month and year. While the Gramsevak was in the witness box the defendant could not bring anything on record regarding the permission granted by the village panchayat for such construction at the behest of the defendant. On the

contrary the plaintiff relied upon the testimony of the Executive Magistrate who was instrumental in arriving at a compromise between the parties. In addition Regular Civil Suit No. 27 of 1983 was filed by the plaintiff for permanent injunction restraining the defendant from making any construction and the said suit was compromised on the undertaking furnished by the defendant that he would not construct anything further (Exh. 54 and 55). Having taken the defence that it was he who had constructed a pakka shop on the suit plot, the defendant failed to prove the same. Even the Resolution No.88 passed by the Village Panchayat for fixing the property tax mentioned about the suit property and it did not indicate that in the year 1977-78 the defendant had constructed a shop and, therefore, it was for the first time being assessed to tax. Both the Courts below have considered the documentary and oral evidence and recorded a concurrent finding that the defendant could not prove his case that he had constructed a pakka shop on the suit plot. Consequently it has been held by both the Courts below that the defendant is a licensee in the suit property and the plaintiff was entitled for possession of the suit property. On these obtaining

circumstances there does not arise any substantial question of law for consideration of this Court and hence the appeal must fail at the threshold.

. The same is hereby dismissed in limine.

. Civil Application stands rejected. Ad-interim order stands vacated.

(B.H